

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BEFORE THE SECRETARY OF THE COMMONWEALTH

PROTHONOTARY
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Department of State

Commonwealth of Pennsylvania
Bureau of Charitable Organizations

vs.

National Association for the Prevention
of Starvation,
Respondent

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Docket No. 0044-98-12
File No. 11-98-09006

FINAL ADJUDICATION AND ORDER

Carol Aichele
Secretary of the Commonwealth

302 North Office Building
Harrisburg, PA 17120
(717)787-7630

HISTORY

This matter comes before the Secretary of the Commonwealth ("Secretary") on a five count order to show cause filed November 2, 2011, alleging that the National Association for the Prevention of Starvation ("Respondent" or "NAPS") is subject to administrative sanctions under the Solicitation of Funds for Charitable Purposes Act ("Act").¹ The order to show cause alleges that Respondent violated the Act at 10 P.S. §162.15(a)(1), by and through 10 P.S. §162.5(a), by soliciting contributions in the Commonwealth without being properly registered under the Act during four consecutive fiscal years (2007 to 2010). The order to show cause also alleges that Respondent violated the Act at 10 P.S. §162.15(a)(1) by soliciting contributions over the internet and through other means in violation of a Cease and Desist Order issued to Respondent by the Secretary on December 13, 2010.

In light of the believed failure of the Respondent to file an answer to the order to show cause, the Commonwealth filed a motion to enter default and deem facts admitted in accordance with the General Rules of Administrative Practice and Procedure at 1 Pa. Code §35.37 on February 2, 2012. Again, under the belief that the Respondent had failed to submit a reply to either the order to show cause or the motion to deem facts admitted, the Secretary issued an adjudication and order in disposition of this matter on March 8, 2012, imposing an administrative fine of \$5,000.00.

Subsequent thereto, Respondent notified the Secretary that they had in fact sent a letter to the Prothonotary on December 1, 2011 regarding the filing of the order to show cause and requesting a ninety-day extension of time to file a response thereto. This was followed up by a letter on December 30, 2011. Accordingly, on April 16, 2012 the Secretary issued an Order rescinding the prior Adjudication and Order and delegating this matter to the Office of Hearing Examiners for hearing.

¹ Act of December 19, 1990, P.L. 1200, No. 202, *as amended*, 10 P.S. § 162.1 *et seq.*

A formal administrative hearing was held on June 15, 2012 in Harrisburg, Pennsylvania, before Hearing Examiner John T. Henderson, Jr. Eric Spada, Esquire, represented the Commonwealth. Mr. Victor Pile, Finance Manager for Respondent, represented the Respondent and participated by telephone without objection by the Commonwealth. At the commencement of the hearing, the Commonwealth withdrew Count Five of the order to show cause. At the conclusion of the hearing, Respondent requested additional time to provide further documentary evidence regarding the organization, again without objection by the Commonwealth. The evidence was received on June 22, 2012 and marked as exhibits R-1 to R-7. The record in this matter was closed with the filing of the hearing transcript on June 28, 2012.

FINDINGS OF FACT

1. This matter is before the Secretary pursuant to the Solicitation of Funds for Charitable Purposes Act, Act of December 19, 1990, P.L. 1200, No. 202, *as amended* ("Act"), 10 P.S. §§ 162.1, et seq. (Docket No. 0044-98-11)

2. Respondent's address is 7000 Adventist Blvd. N.W., Huntsville, AL 35896 and is located on the campus of Oakwood University. (Exhibit R-6; N.T. 29)

3. Respondent is a charitable organization that is required to be registered with the Bureau in that it solicited in the Commonwealth for fiscal years 2007, 2008, 2009 and 2010. (Exhibits C-2 to C-5, R-3)

4. Respondent initially became registered as a charitable organization with the Bureau on June 30, 2011 (Registration Number 38250). (Bureau records)

5. Respondent solicits contributions in the Commonwealth by door-to-door solicitations, video presentations, the telephone, and through an interactive website. (Exhibits R-6 and R-7)

6. In November 2009, the Bureau received evidence that Respondent was soliciting in the Commonwealth without being registered with the Bureau. (N.T. 38)

7. On May 24, 2010, the Bureau sent Respondent a certified letter requesting that Respondent register with the Bureau or demonstrate that Respondent was excluded or exempted from registration. (N.T. 38-39)

8. Respondent initially failed to respond to the Bureau's May 24, 2010 letter. (N.T. 39)

9. On December 13, 2010, a Cease and Desist Order was issued to Respondent by the Secretary of the Commonwealth, ordering the National Association for the Prevention of Starvation to immediately cease from soliciting contributions in Pennsylvania until such time as the charity

duly registers or provides information that it is excluded or exempt from registration. (N.T. 39)

10. On June 29, 2011, the Bureau received Respondent's registration packet for fiscal year ending December 31, 2010. (Bureau records)

11. The Cease and Desist Order was lifted effective June 30, 2011. (Bureau records)

12. In response to Question 8 on Respondent's Form BCO-10, Respondent indicated that Respondent first solicited Pennsylvania residents on February 10, 2001. (Bureau records)

13. Respondent submitted a chart showing the number of Pennsylvania contributors and the amount raised by Respondent in Pennsylvania since 2001. (Exhibit C-1)

14. According to Respondent's IRS Form 990's, Respondent has received gross contributions totaling \$490,883 for fiscal year ending December 31, 2007, of which \$295 was raised in Pennsylvania; \$575,317 for fiscal year ending December 31, 2008, of which \$9,414.65 was raised in Pennsylvania; \$729,073 for fiscal year ending December 31, 2009, of which \$4,388.70 was raised in Pennsylvania; and \$791,363 for fiscal year ending December 31, 2010, of which \$4,975.75 was raised in Pennsylvania. (Exhibits C-1 to C-5)

15. Respondent paid late fees in conjunction with submitting its registration. (N.T. 17)

16. Respondent's failure to register was not due to any intent to avoid the Act's registration requirements but due to a good faith belief that it was exempt from registration under Section 162.6(a)(1) of the Act, 10 P.S. §162.15(a)(1), which provides that an exemption from registration is provided to educational institutions and "any auxiliary associations, foundations and support groups which are directly responsible to educational institutions." (N.T. 18, 30)

17. Respondent is a non-profit organization, based at Oakwood University, is a registered campus organization at Oakwood University, references Oakwood University in its

By-Laws and uses Oakwood students as its primary source of volunteers. (N.T. 19, 28)

18. Respondent is listed on the Oakwood University website and is physically located at Oakwood University in a building owned by Oakwood, for which the organization is not charged rent. (N.T. 19, 29; Exhibits R-1 to R-6)

19. None of the funds raised by the organization are tendered to Oakwood. (N.T. 22, 24)

20. Respondent reports student participation information to Oakwood, but controls the distribution of the charitable contributions it receives. (N.T. 24-25)

21. Most of Respondent's employees are Oakwood alumni, who are compensated by Respondent, are considered employees of Respondent and have no connection with Oakwood. (N.T. 26)

22. Disbursements made by Respondent are distributed in the name of NAPS and not Oakwood University. NAPS—and not Oakwood University—has complete control over how funds are disbursed. (N.T. 29)

23. Respondent was served with all pleadings, orders and notices filed of record in this matter, and attended the hearing by telephone, pro se, held on June 15, 2012. (Docket number 0044-98-12)

CONCLUSIONS OF LAW

1. The Secretary has jurisdiction in this matter. (Findings of Fact, Nos. 1, 3-5, 13)
2. Respondent has been afforded reasonable notice of the charges against it and an opportunity to be heard in this proceeding in accordance with the Administrative Agency Law, 2 Pa. C. S. §504. (Findings of Fact, No. 23)
3. Respondent is subject to disciplinary action under section 15(a)(1) of the Act, 10 P.S. §162.15(a)(1), by and through section 5(a), by soliciting contributions in the Commonwealth without being properly registered under the Act during fiscal year ending December 31, 2007. (Findings of Fact, Nos. 3-14)
4. Respondent is subject to disciplinary action under section 15(a)(1) of the Act, 10 P.S. §162.15(a)(1), by and through section 5(a), 10 P.S. §162.5(a), by soliciting contributions in the Commonwealth without being properly registered under the Act during fiscal year ending December 31, 2008. (Findings of Fact, Nos. 3-14)
5. Respondent is subject to disciplinary action under section 15(a)(1) of the Act, 10 P.S. §162.15(a)(1), by and through section 5(a), 10 P.S. §162.5(a), by soliciting contributions in the Commonwealth without being properly registered under the Act during fiscal year ending December 31, 2009. (Findings of Fact, Nos. 3-14)
6. Respondent is subject to disciplinary action under section 15(a)(1) of the Act, 10 P.S. §162.15(a)(1), by and through section 5(a), 10 P.S. §162.5(a), by soliciting contributions in the Commonwealth without being properly registered under the Act during fiscal year ending December 31, 2010. (Findings of Fact, Nos. 3-14)

DISCUSSION

This matter is before the Secretary pursuant to the Solicitation of Funds for Charitable Purposes Act (Act).² The order to show cause issued in this matter comprises five counts, with count five having been withdrawn at the hearing. The remaining counts allege that Respondent violated the following provisions of the Act, which provide in pertinent part:

§ 162.5. Registration of charitable organizations; financial reports; fees; failure to file

(a) Registration and approval required. - A charitable organization, unless exempted from registration requirements pursuant to section 6, shall file a registration statement with the department. This statement must be refiled annually within 135 days after the close of its fiscal year in which the charitable organization was engaged in solicitation activities. The department shall review the statement pursuant to subsection (r). No charitable organization shall solicit contributions or have contributions solicited in its behalf before approval of its registration statement by the department.

* * *

§ 162.15. Prohibited Acts

(a) General Rule. - Regardless of a person's intent or the lack of injury, the following acts and practices are prohibited in the planning, conduct or execution of any solicitation or charitable sales promotion:

(1) Operating in violation of, or failing to comply with, any of the requirements of this act, regulations of the department or an order of the secretary, or soliciting contributions after registration with the department has expired or has been suspended or revoked or soliciting contributions prior to the solicitation notice and contract having been approved by the department.

* * *

The Secretary is authorized pursuant to the section 17 of the Act, 10 P.S. §162.17, to take the following actions to enforce the Act:

§ 162.17. Administrative enforcement and penalties

(a) General rule, - The secretary may refuse to register or revoke or suspend the registration of any charitable organization, professional fundraising counsel or professional solicitor whenever he finds that a charitable organization, professional fundraising counsel or professional solicitor, or an agent, servant or employee thereof:

² Act of December 19, 1990, P.L. 1200, No. 202, *as amended*, 10 P.S. §§162.1 et seq.

(1) Has violated or is operating in violation of any of the provisions of this act, the regulations of the department, or an order issued by the secretary.

(2) Has refused or failed or any of its principal officers has refused or failed, after notice, to produce any records of such Organization or to disclose any information required to be disclosed under this act or the regulations of the department.

(3) Has made a material false statement in an application, statement or report required to be filed under this act.

(b) Additional actions. --- When the secretary finds that the registration of any person may be refused, suspended or revoked under the terms of subsection (a), the secretary may:

(1) Revoke a grant of exemption to any of the provisions of this act:

(2) Issue an order directing that the person cease and desist specified fundraising activities.

(3) Impose an administrative fine not to exceed \$1,000 for each act or omission which constitutes a violation of this act and an additional penalty, not to exceed \$100 for each day during which such violation continues. Registration will be automatically suspended upon final affirmation of an administrative fine until the fine is paid or until the normal expiration date of the registration. No registration shall be renewed until the fine is paid.

In counts one through four, the Commonwealth specifically charges that Respondent violated the Act at 10 P.S. §162.15(a)(1), by and through 10 P.S. §162.5(a), by soliciting contributions in the Commonwealth without being properly registered under the Act. There is one count for each fiscal year ending on December 31, 2007 through December 31, 2010.

At the hearing, Respondent had the burden of establishing by a preponderance of the evidence that it was excluded from the Act or exempt from registration, since it was admitted that it had solicited contributions for the fiscal years in question. (Exhibit C-1) In its presentation, Respondent noted that it had paid late fees in conjunction with submitting its registration and that not having registered was not due to any intent to avoid the Act's registration requirements. (N.T. 17) Respondent alleges that it had determined, in good faith, that it was exempt from registration under Section 162.6(a)(1) of the Act, 10 P.S. §162.15(a)(1), which provides that an exemption from registration is provided to educational institutions and "any auxiliary associations, foundations and support groups which are directly responsible to educational institutions." (N.T.

18, 30) Respondent alleges that it is a non-profit organization which is based at Oakwood University, is a registered campus organization at Oakwood University, references Oakwood University in its by-laws, and that a majority of its volunteers are Oakwood students. (N.T. 19, 28) Respondent also notes that the organization is listed on the Oakwood University website and that it is physically located at Oakwood University in a building owned by Oakwood for which the organization is not charged rent. (N.T. 19, 29; Exhibits R-1 to R-6) In response to questions posed by the Commonwealth, Respondent admitted that none of the funds raised by the organization are tendered to Oakwood. (N.T. 22, 24) Respondent also noted that while it reported student participation information to Oakwood, it controlled the distribution of the charitable contributions it received. (N.T. 24-25) Respondent also stated that while most of its employees are Oakwood alumni, it also admitted that its employees are compensated by the organization, are considered employees of the organization, and have no connection with Oakwood University. (N.T. 26) Finally, Respondent stated that disbursements made by the organization are distributed in the name of NAPS and not Oakwood University and that NAPS—and not Oakwood—has complete control over how funds are disbursed. (N.T. 29)

In its presentation, the Commonwealth introduced into evidence financial records of the organization which indicated that the National Association for the Prevention of Starvation received gross contributions totaling \$490,883 for fiscal year ending December 31, 2007, of which \$295 was raised in Pennsylvania; \$575,317 for fiscal year ending December 31, 2008, of which \$9,414.65 was raised in Pennsylvania; \$729,073 for fiscal year ending December 31, 2009, of which \$4,388.70 was raised in Pennsylvania; and \$791,363 for fiscal year ending December 31, 2010, of which \$4,975.75 was raised in Pennsylvania. (Exhibits C-1 to C-5)

The Commonwealth also introduced into evidence a Guidance Statement jointly issued by the Bureau of Charitable Organizations and the Charitable Trusts and Organizations Section of the

Pennsylvania Office of Attorney General regarding section 6(a)(1) of the Act, which notes that while the term “directly responsible” is not defined in the Act, the term is narrowly defined to include only organizations that are controlled by educational institutions. Accordingly, only where an organization which is legally independent is directly responsible or liable to the educational institution will it qualify for the exemption from registration. (N.T. 31-36; Exhibit C-6) This requirement ensures that charitable solicitations are accounted for and used for the benefit of the educational institution.

Also testifying for the Commonwealth was Mr. Steven Uhrich, Special Investigator for the Department’s Bureau of Charitable Organizations. Mr. Uhrich testified that in November 2009, the Bureau was informed that Respondent was soliciting contributions in Pennsylvania. (N.T. 38) Mr. Uhrich stated that a letter of inquiry was sent to Respondent in May 2010 and no response was received, which led to the entry of a Cease and Desist Order on December 13, 2010. (N.T. 39) Mr. Uhrich then testified that Respondent contacted the Bureau, which led to Respondent providing additional financial information, as indicated by an email exchange also introduced into evidence. (N.T. 39-40; Exhibit C-1)

The facts establish that the National Association for the Prevention of Starvation became registered as a charitable organization on June 30, 2011, submitting documentation for the fiscal year ending on December 31, 2010. As part of the registration, Respondent admitted that it began soliciting Pennsylvania residents on February 10, 2001. The charity has raised money in Pennsylvania every year since 2001 through 2010. Although the amounts raised in Pennsylvania have varied, the facts also establish that Respondent has received annual gross contributions totaling over \$490,600 since fiscal year ending December 31, 2007, and thus has not been exempt from registration as a charitable organization. Additionally, even though Respondent registered with the Bureau on June 30, 2011 for its fiscal year ending on December 31, 2010, section 5(a) of

the Act³ is clear that a charitable organization may not solicit contributions or have contributions solicited in its behalf without a current registration on file with the Bureau.

It is also clear that after analyzing the relationship between Respondent and Oakwood University that Respondent does not qualify for the exemption from registration set forth under section 162.6(a)(1) of the Act, 10 P.S. §162.15(a)(1), which provides an exemption from registration to educational institutions and “any auxiliary associations, foundations and support groups which are directly responsible to educational institutions.” Under the Guidance Statement jointly issued by the Bureau of Charitable Organizations and the Charitable Trusts and Organizations Section of the Pennsylvania Office of Attorney General, Respondent is not “directly responsible” to Oakwood University since it does not account for its charitable solicitations to Oakwood and makes its own determination as to how its charitable funds will be disbursed. While there is no doubt that Respondent and Oakwood have a unique symbiotic relationship, it still does not qualify for the exemption from registration.

Respondent's solicitation of contributions in the Commonwealth without being properly registered under the Act for fiscal years ending on December 31, 2007, December 31, 2008, December 31, 2009 and December 31, 2010 therefore establishes a violation of 10 P.S. §162.15(a)(1) by and through 10 P.S. §162.5(a), and Respondent is thus subject to disciplinary action on counts one through four.

In determining a sanction, the Secretary weighs the number and seriousness of the violations against any mitigating evidence. At the hearing, Respondent presented mitigating evidence in an attempt to lessen the imposition of any administrative fine. Specifically, Respondent noted that it had paid late fees in conjunction with submitting its registration and that not having registered was not due to any intent to avoid the Act's registration requirements. (N.T. 17) The

³ 10 P.S. §162.5(a).

Respondent had determined, in good faith, that it was exempt from registration under section 162.6(a)(1) of the Act, 10 P.S. §162.15(a)(1), due to its unique relationship with Oakwood University. (N.T. 18, 30) In doing so, it did not have the benefit of the Attorney General's Guidance Statement, nor did it seek any interpretive assistance from the Bureau. (N.T. 44)

The Commonwealth requested that the Secretary impose upon Respondent an appropriate penalty for the actions set forth in the order to show cause. Section 17(b)(3) of the Act, 10 P.S. §162.17(b)(3), authorizes the Secretary to "impose an administrative fine not to exceed \$1,000 for each act or omission which constitutes a violation of [the] Act." Respondent solicited charitable contributions in the Commonwealth for four years without properly being registered as a charitable organization. This was charged as, and may be reasonably found to constitute, four distinct violations of the Act, therefore the Commonwealth requested that an administrative fine of \$4,000.00 be imposed. (N.T. 48)

The legislative intent behind the Solicitation of Funds for Charitable Purposes Act is not merely to require proper registration of charitable organizations, professional fundraisers and professional solicitors, but to protect the citizens of this Commonwealth by requiring full public disclosure of the identity of persons who solicit contributions from the public, the purposes for which such contributions are solicited and the manner in which they are actually used. See 10 P.S. §162.2. In light of the Respondent having registered, having paid a late filing fee, and having in good faith thought that it was exempt from registration, the Secretary finds that it would be more equitable to impose an administrative fine of \$3,000.00.

Accordingly, based on the foregoing findings of fact, conclusions of law and discussion, the following order shall issue:

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BEFORE THE SECRETARY OF THE COMMONWEALTH

Commonwealth of Pennsylvania
Bureau of Charitable Organizations

vs.

National Association for the Prevention
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Docket No. 0044-98-12
File No. 11-98-09006

ORDER

AND NOW, this day 5th of September, 2012, upon consideration of the foregoing findings of fact, conclusions of law and discussion, it is hereby ORDERED that an administrative fine in the amount of \$3,000.00 shall be imposed upon National Association for the Prevention of Starvation. This amount shall be remitted by certified check or U.S. Postal Service money order made payable to "Commonwealth of Pennsylvania" within thirty days of the effective date of this order and mailed to:

Martha H. Brown, Assistant Counsel
Pennsylvania Department of State
Office of Chief Counsel .
301 North Office Building
Harrisburg, PA 17120

Pursuant to section 17(b)(3) of the Act, 10 P.S. §162.17(b)(3), failure to pay the administrative fine in full within 30 days of the effective date of this order will result in the automatic suspension of the registration of National Association for the Prevention of Starvation until the fine is paid in full. No registration shall be renewed until the fine is paid.

Appeal may be taken pursuant to section 17(e) of the Act, 10 P.S. §162.17(e), and 2 Pa. C.S. §702, within 30 days of the date of mailing of this Adjudication and Order as indicated below.

This order shall take effect thirty days from the date it is deposited in the mail.

BY ORDER:



Carol Aichele
Secretary of the Commonwealth

Respondent:

National Association for the Prevention of Starvation
7000 Adventist Blvd. N.W.
Huntsville, AL 35896

For the Commonwealth:

Eric M. Spada, Prosecuting Attorney
Commonwealth of Pennsylvania
Department of State
P.O. Box 2649
Harrisburg, PA 17105-2649

Date of Mailing:

September 5, 2012

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NOTICE

The attached Adjudication and Order represents the final agency decision in this matter. It may be appealed to the Commonwealth Court of Pennsylvania by the filing of a Petition for Review with that Court within 30 days after the entry of the order in accordance with the Pennsylvania Rules of Appellate Procedure. See Chapter 15 of the Pennsylvania Rules of Appellate Procedure entitled "Judicial Review of Governmental Determinations," Pa. R.A.P 1501-- 1561. Please note: An order is entered on the date it is mailed. If you take an appeal to the Commonwealth Court, you must serve the Secretary of the Commonwealth with a copy of your Petition for Review. The agency contact for receiving service of such an appeal is:

Pennsylvania Department of State
Office of Chief Counsel
Legal Counsel, Bureau of Charitable Organizations
401 North Street
Room 301
Harrisburg, PA 17120